

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
NTCH, Inc. Petition for Forbearance from 47)	
U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b))	
)	
Cricket Communications, Inc.)	
Petition for Forbearance)	

ORDER

Adopted: September 16, 2011

Released: September 16, 2011

By the Commission:

I. INTRODUCTION

1. In this order, we address two petitions for forbearance, one filed by Cricket Communications, Inc. (Cricket) and one filed by NTCH, Inc. and its affiliated operating entity NTCH-West Tenn, Inc. (collectively, NTCH), pursuant to section 10 of the Communications Act of 1934, as amended (the Act).¹ These petitions seek forbearance from the requirement that the service area of a competitive eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETCs.²

2. We conclude that forbearance in these limited circumstances furthers the Act's and Commission's goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program. Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in this limited circumstance is not necessary to ensure that rates remain just and reasonable or to protect consumers.³ To promote accountability of universal service funding and guard against waste, fraud, and abuse in the Universal Service Fund (USF or Fund), we condition our forbearance from applying the rural service area conformance requirement of the Act to NTCH and Cricket upon their compliance with certain conditions previously imposed on other Lifeline-only ETCs.⁴

¹ Cricket Communications, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 21, 2010) (Cricket Forbearance Petition); 47 U.S.C. § 160. On May 16, 2011, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 19, 2011, the date on which the Cricket Forbearance Petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act. *Telecommunications Carriers Eligible to Receive Universal Service Support; Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 6822 (2011); NTCH, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 20, 2011) (NTCH Forbearance Petition).

² See *infra* para. 9.

³ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

⁴ See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102–03, paras. 17–18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; (continued . . .)

We emphasize that the forbearance we are granting is limited to NTCH and Cricket's designation as a Lifeline-only ETC. If either entity petitions to become an ETC to receive high-cost support, this forbearance order is inapplicable and each entity must satisfy all of the statutory requirements applicable to ETCs under the Act.

II. BACKGROUND

3. Congress directed the Commission to establish a universal service fund to help ensure that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation, "including low-income consumers."⁵ The Commission's Lifeline program furthers this goal by reducing the price of monthly telephone service for low-income consumers.⁶ Section 254(e) of the Act provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support.⁷ To become an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.⁸

4. The Act and the Commission's rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.⁹ Although a carrier seeking to become an ETC usually requests designation in a specific service area, it is the commission designating that carrier—not the ETC itself—that establishes an ETC's service area.¹⁰ When a competitive ETC seeks to serve an area already served by a rural telephone company,¹¹ section 214(e)(5) of the Act imposes an additional requirement that the competitive ETC's service area must conform to the rural telephone company's service area.¹² Accordingly, if a commission seeks to designate a competitive ETC

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Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire, WC Docket No. 09-197, Order, 25 FCC Rcd 17797, 17804–05, paras. 20–24 (Wireline Comp. Bur. 2010).

⁵ 47 U.S.C. § 254(b)(3).

⁶ Through the Lifeline program, low-income consumers may receive discounts of up to \$13.50 off the monthly cost of telephone service, with the federal program reimbursing the ETC up to \$10 each month. 47 C.F.R. § 54.401(a)(2). In Tribal areas, the federal program reimburses ETCs up to \$25 each month. 47 C.F.R. § 54.403(a)(4).

⁷ 47 U.S.C. § 254(e). An entity need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114–15, para. 19 (1999) (*Fourteenth Order on Reconsideration*).

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁹ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

¹⁰ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

¹¹ See 47 U.S.C. § 153(37) (defining "rural telephone company").

¹² 47 U.S.C. § 214(e)(5); see also 47 C.F.R. § 54.207(b).

for an area that differs from a rural telephone company's existing service area, that rural service area must first be redefined under the process set forth under the Act.¹³

5. The Act defines the service area of each rural telephone company to be that "company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."¹⁴ The Commission has interpreted this language to mean that "neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."¹⁵ In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: creamskimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition.¹⁶ These factors were identified in the context of an entity seeking ETC designation to receive high cost and low-income support. The Commission's rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company's service area.¹⁷ A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agree upon a new definition.¹⁸

6. *Cricket Forbearance Petition.* Cricket states that it provides digital wireless services in 35 states across the country.¹⁹ On December 22, 2009, Cricket filed with the Commission a petition seeking designation as an ETC for the limited purpose of offering Lifeline and Link Up services in New York, North Carolina, Tennessee, Virginia, and the District of Columbia.²⁰ On June 21, 2010, Cricket filed a petition seeking forbearance from applying section 214(e)(5) of the Act and section 54.207 of the Commission's rules to allow Cricket to become eligible to be designated a limited ETC to participate in the Lifeline and Link Up programs only.²¹ Cricket subsequently narrowed the scope of its forbearance

¹³ 47 U.S.C. § 214(e)(5); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582, para. 41 (2004) (*Virginia Cellular Order*) ("In order to designate [a competitive carrier] as an ETC in a service area that is smaller than the affected rural telephone company [service] areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act."); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6439, paras. 37–38 (2004) (*Highland Cellular Order*) (same).

¹⁴ 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

¹⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880, para. 187 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

¹⁶ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179–80, paras. 172–74 (1996) (*1996 Recommended Decision*); *see also Highland Cellular Order*, 19 FCC Rcd at 6426, para. 9. A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. *See Universal Service First Report and Order*, 12 FCC Rcd at 8881–82, para. 189.

¹⁷ 47 C.F.R. § 54.207(c), (d).

¹⁸ 47 C.F.R. § 54.207(c)(3), (d)(2).

¹⁹ Cricket Forbearance Petition at 3; Letter from Matthew A. Brill, Counsel for Cricket Communications, Inc., to Marlene Dortch, FCC, WC Docket No. 09-197, at 3 (*Cricket Ex Parte Presentation June 21, 2011*).

²⁰ Cricket Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed Dec. 22, 2009).

²¹ Cricket Forbearance Petition at 1, 3–5. On June 25, 2010, the Bureau issued a public notice seeking comment on the Cricket Forbearance Petition. *Comment Sought on Cricket Communications, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC (continued . . .)

petition to seek forbearance only for Lifeline support; it no longer seeks forbearance or ETC designation with regard to Link Up support.²²

7. *NTCH Forbearance Petition.* NTCH states that it provides mobile wireless voice service under the brand name ClearTalk in 17 different markets.²³ On June 20, 2011, NTCH filed a petition seeking forbearance from the application of the definition of “service area” in section 214(e)(5) of the Act and section 54.207 of the Commission’s rules so that it may be designated as a limited ETC eligible to receive Lifeline-only support.²⁴ In addition, NTCH filed with the Commission petitions for limited ETC designation in the states of Alabama and Tennessee, and North Carolina.²⁵ NTCH states that its request for forbearance satisfies the statutory requirements for forbearance and is in the public interest.²⁶

III. DISCUSSION

8. The Act requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.²⁷

9. As we have previously recognized, our ability to analyze a petition for forbearance is highly dependent on knowing the exact scope of the requested forbearance.²⁸ Here, the petitions of NTCH and Cricket for forbearance are construed as seeking forbearance from the requirement that the service area of a competitive ETC that only seeks designation for Lifeline support must conform to the service area of any rural telephone company serving the same area.²⁹ As such, our analysis focuses on

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Rcd 8195 (Wireline Comp. Bur. 2010). The Pennsylvania Public Utility Commission (Pennsylvania Commission) and TracFone Wireless, Inc. (TracFone) filed comments on this petition. Cricket filed reply comments.

²² Letter from Matthew A. Brill, Counsel for Cricket Communications, Inc., to Marlene Dortch, FCC, WC Docket No. 09-197, at 1 (filed April 29, 2011) (*Cricket Ex Parte Letter April 29, 2011*); see also 47 C.F.R. § 1.59(b).

²³ NTCH Forbearance Petition at 1.

²⁴ See *id.* at i. On June 29, 2011, the Bureau issued a public notice seeking comment on the Forbearance Petition. *Comment Sought on NTCH, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama and Tennessee and Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 2569 (Wireline Comp. Bur. 2011). NTCH filed comments to clarify its petition. No other party filed comments. NTCH is not seeking universal service support for Link Up.

²⁵ NTCH, Inc. Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee, WC Docket No. 09-197 (filed Mar. 5, 2010); NTCH, Inc. Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of North Carolina, WC Docket 09-197 (filed Mar. 3, 2011).

²⁶ NTCH Forbearance Petition at 3–9.

²⁷ 47 U.S.C. § 160(a). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions. 47 U.S.C. § 160(b).

²⁸ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543, 9551, 9553, paras. 13, 16 (2009).

²⁹ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207. We do not read NTCH’s or Cricket’s petitions as requesting forbearance from the requirement that a designating commission establish the service area of the competitive ETC because neither petition examines that requirement in any detail nor argues how forbearing from that requirement would be in the public interest. Instead, both petitions focus on the redefinition process that often occurs as a result of the “conformance” requirement, i.e., that a competitive ETC service area conform to that of the relevant rural

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whether we should forbear from applying the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules to NTCH and Cricket. Because both NTCH and Cricket seek forbearance only for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services and as it relates to the Commission's Lifeline program.³⁰ We conclude that conditionally forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest under these limited circumstances.³¹ As such, and for the limited purpose of participation in the Lifeline program only, we conditionally forbear from applying the second sentence of section 214(e)(5) of the Act as well as section 54.207(b) of our rules insofar as those sections would require that NTCH or Cricket's service area conform to the service area of any rural telephone company serving the same area. We note that by forbearing from the conformance requirements for NTCH and Cricket to be eligible for ETC designation for Lifeline-only support as stated herein, section 54.207(c) of the Commission's rules is inapplicable because redefinition is not necessary. As a result, if a commission designates either NTCH or Cricket as a facilities-based, limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. We emphasize, however, that if either Cricket or NTCH petitions to be an ETC to receive high-cost support in part of a service area served by a rural telephone company, redefinition would be required by the Act.

10. *Just and Reasonable.* Section 10(a)(1) of the Act requires that we consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.³² We conclude that compliance with the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that NTCH's and

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telephone company. See, e.g., NTCH Forbearance Petition at 4; Cricket Forbearance Petition at 3–4 (characterizing section 214(e)(5) as only embodying the conformance requirement).

³⁰ See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15099–00, paras. 9–10 (2005) (*TracFone Forbearance Order*); *Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*; *Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381, 3388, paras. 15–16 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784, 8787, para. 6 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 10510, 10514, para. 6 (2010); *Telecommunications Carriers Eligible for Universal Service Support; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 13866, 13868, para. 6 (2010) (*Conexions Forbearance Order*). TracFone argues that the forbearance requested by Cricket should be extended to all similarly situated ETCs who have been designated for the limited purpose of providing services supported by the Universal Service Fund low income program. See TracFone Comments at 1. In the alternative, TracFone requests that the Commission issue a declaratory ruling that section 214(e)(5) of the Act and section 54.207 of the Commission's rules do not require carriers seeking Lifeline-only ETC designations to conduct cream skimming analyses. See TracFone Comments at 5. TracFone did not properly file its request as a petition for forbearance and thus, its request goes beyond the scope of this proceeding, and we decline to address it at this time. See 47 C.F.R. § 1.53

³¹ See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

³² 47 U.S.C. §§ 160(a)(1), 214(e).

Cricket's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only.³³ Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-subscriber basis and is directly reflected in the price that the eligible subscriber pays.³⁴ NTCH and Cricket maintain that forbearance would give consumers access to lower rates and increased competition, which would help to ensure that rates are just, reasonable and non-discriminatory.³⁵ Furthermore, forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.³⁶ We agree with NTCH and Cricket's assertions that, if granted forbearance and thereafter designated as a limited ETC, NTCH and Cricket's Lifeline offerings will compete, at a minimum, with the Lifeline offerings of the incumbent wireline carrier, as well as other wireline and wireless providers, in any given geographic area.³⁷ We also expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.³⁸ For these reasons, we find that NTCH and Cricket have demonstrated that the first prong of section 10(a) is met.

11. *Consumer Protection.* Section 10(a)(2) requires that we consider whether applying the conformance requirement to a mobile wireless voice service provider that seeks a Lifeline-only ETC designation is necessary for the protection of consumers. If NTCH or Cricket receives Lifeline-only ETC designations, they will be offering Lifeline-eligible consumers an additional choice of providers for discounted telecommunications services. NTCH states that it plans to offer Lifeline services over its third-generation network without an annual contract requirement, which would provide reliability as well as flexibility to consumers who need the mobility, security, and convenience of a wireless phone, but who are concerned about credit checks, deposits, or long-term contracts.³⁹ Similarly, Cricket states that its flat-rate, unlimited service model will be attractive for many consumers on a limited budget.⁴⁰ We disagree with the argument that forbearing from the conformance requirement for Lifeline-only support may harm consumers⁴¹—these new offerings provide additional competitive choices to many low-income consumers who cannot afford non-discounted offerings. Moreover, there is no evidence that forbearance from the conformance requirement for the limited purpose of being a Lifeline-only ETC would harm

³³ A provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal. *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

³⁴ 47 C.F.R. §§ 54.401, 54.403.

³⁵ NTCH Forbearance Petition at 6 (noting that forbearance from the service area conformance requirement would also help to ensure that the rates and terms of other carriers are kept reasonable through competition as competitors can also offer Lifeline service); Cricket Forbearance Petition at 5-6.

³⁶ Cricket Forbearance Petition at 6; *see* 47 U.S.C. §§ 201, 202.

³⁷ NTCH Forbearance Petition at 6; Cricket Forbearance Petition at 6-7; *see* 47 C.F.R. § 54.405(a)–(b) (requiring ETCs to offer and publicize the availability of Lifeline services).

³⁸ *See, e.g., TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 13; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 19; *i-wireless Forbearance Order*, 25 FCC Rcd at 8787, para. 9.

³⁹ NTCH Forbearance Petition at 1.

⁴⁰ Cricket Forbearance Petition at 8.

⁴¹ Letter from Patrick M. Rosvall, Counsel for Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 3 (filed Apr. 20, 2011) (California Rural Telephone Companies *Ex Parte* Letter); *see also* Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 1 (filed Aug. 5, 2011) (OPASTCO *Ex Parte*).

consumers currently served by the rural telephone companies in the relevant service areas. For these reasons, we find that NTCH and Cricket have demonstrated that the second prong of section 10(a) is met.

12. *Public Interest.* Section 10(a)(3) requires that we consider whether applying the conformance requirement to a facilities-based mobile wireless carrier that seeks ETC designation for Lifeline support only is in the public interest. Petitioners assert, and we agree, that forbearing from the conformance requirement in these limited circumstances will promote competitive market conditions for the low-income program.⁴² Both petitioners seek to be designated as Lifeline-only ETCs in a number of states in order to provide services to low-income consumers. Requiring each petitioner to conform its service areas to those of the rural carriers in the states they seek to participate only in the Lifeline program would result in numerous redefinition proceedings, which could delay their entry into those markets, make it more difficult to market to potential Lifeline consumers on a statewide basis, and deprive low-income consumers in areas where the incumbent wireline provider is a rural telephone company of an additional choice of service provider. For example, Cricket and NTCH both state that they have confronted situations in which the redefinition process has taken years to resolve and, as such, has cost consumers competitive alternatives to Lifeline offerings.⁴³ We find that applying the conformance requirement in these limited circumstances would not be in the public interest when balanced against the benefits of introducing a competitive, alternative Lifeline provider to low-income consumers.

13. We disagree with assertions that granting forbearance from the conformance requirement for Lifeline-only ETC designation will have a detrimental effect on rural telephone companies.⁴⁴ As both Cricket and NTCH note, the amount of Lifeline support is not tied to the cost of serving an area.⁴⁵ Rather, Lifeline support is a fixed, per-line amount nationwide, and ETCs are required to pass through the Lifeline support they receive to the benefit of their subscribers.⁴⁶ As such, any creamskimming concerns that may have been raised in the context of an ETC designation for high cost support in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. The California Rural ILECs express concerns that granting Cricket and NTCH forbearance from the conformance requirement and redefinition process can impact rural carriers' abilities to serve the entire rural service territories and therefore states should be able to consider a competitive ETC's impact on the rural telephone companies and its consumers.⁴⁷ We find, however, that the Act contains safeguards to address the concerns stated by the California ILECs. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance. We are confident that any concerns raised by a rural telephone company will be evaluated by the relevant commission when considering designating a limited, Lifeline-only ETC.

⁴² See 47 U.S.C. §§ 160(b), 254(b); NTCH Forbearance Petition at 7–8.

⁴³ Cricket Forbearance Petition at 4; NTCH Forbearance Petition at 4 (stating that NTCH has suffered losses of tens of thousands of dollars in revenues and legal fees and an ultimate loss of a foothold in the marketplace, ultimately resulting in loss of competition and consumer choice).

⁴⁴ California Rural Telephone Companies *Ex Parte* Letter at 2–3; *OPASTCO Ex Parte*.

⁴⁵ See NTCH Forbearance Petition at 5; Cricket Forbearance Petition at 7–9.

⁴⁶ See NTCH Forbearance Petition at 5; Cricket Forbearance Petition at 7–9; 47 C.F.R. §§ 54.401, 54.407, 54.504.

⁴⁷ Letter from Patrick M. Rosvall, Counsel for Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 3 (filed July 15, 2011); *OPASTCO Ex Parte*.

14. We also disagree with the argument that granting these petitions will eliminate the role of states in ETC designation and redefinition.⁴⁸ Forbearance in these limited circumstances merely removes the conformance requirement for NTCH and Cricket when seeking ETC designation for Lifeline-only support, so that states, which have jurisdiction over most ETCs, may now designate NTCH or Cricket as limited ETCs eligible for Lifeline only support in part of a rural service area without requiring redefinition of that rural service area. State commissions are still required to consider the public interest, convenience and necessity of designating Cricket and NTCH as a competitive ETC in a rural area already served by a rural telephone company.⁴⁹ Our action does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.⁵⁰

15. The Commission has made clear its commitment to improve accountability for providers receiving universal service support in its continued effort to fight waste, fraud, and abuse.⁵¹ Accordingly, consistent with obligations imposed on other carriers seeking to become Lifeline-only ETCs, we require NTCH and Cricket to assume additional obligations designed to protect against waste, fraud, and abuse.⁵² Specifically, we condition our forbearance from the conformance requirement on NTCH and Cricket by:

- (1) requiring each eligible Lifeline consumer to self-certify under penalty of perjury at the time of enrollment and annually thereafter until a national duplicates database is in place that he or she is the head of household, receives Lifeline-supported service only from NTCH or only from Cricket, and does not receive Lifeline from any other provider;
- (2) requiring each eligible Lifeline consumer at the time of enrollment to initial on the certification form that to the best of his or her knowledge that he or she is not receiving Lifeline-supported service from any other Lifeline provider, and listing as examples the brand names of at least the leading wireline and leading two wireless Lifeline providers in the area to ensure the consumer understands what is meant by “Lifeline-supported service”;
- (3) requiring NTCH and Cricket to make available state-specific subscriber data, including name and address of Lifeline subscribers, to the Universal Service Administrative Company (USAC)

⁴⁸ Pennsylvania Commission Comments at 2.

⁴⁹ 47 U.S.C. §214((e)(3); 47 C.F.R. § 54.201(c).

⁵⁰ The redefinition process is still required for ETCs to receive federal universal service high-cost support and nothing in this order alters the redefinition process for ETCs seeking federal universal service High Cost support.

⁵¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4554 (2011); *Lifeline and Link UP Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC 96-45, Report and Order, FCC 11-97, (rel. June 21, 2011).

⁵² See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102–03, paras. 17–18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire*, WC Docket No. 09-197, Order, 25 FCC Rcd 17797, 17804–05, paras. 20–24 (Wireline Comp. Bur. 2010).

and to each state public utilities commission where it operates for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier;

(4) requiring NTCH and Cricket to assist the Commission, USAC, state commissions, and other ETCs in resolving instances of duplicative enrollment by Lifeline subscribers, including by providing to USAC and/or any state commission, upon request, the necessary information to detect and resolve duplicative Lifeline claims;

(5) requiring NTCH and Cricket to establish safeguards to prevent their subscribers from receiving multiple Lifeline subsidies at the same address and safeguards to prevent individual subscribers from receiving more than one Lifeline discount;

(6) requiring NTCH and Cricket to implement a non-usage policy, if applicable, in all states where NTCH and Cricket provide Lifeline services to subscribers at no monthly charge⁵³, requiring NTCH and Cricket to identify its subscribers that have not used its Lifeline service for 60 days and not seek support for such subscribers if they do not actively use its Lifeline service during a 30-day grace period;

(7) requiring NTCH and Cricket to deal directly with the subscriber to certify and verify the subscriber's Lifeline eligibility;

(8) requiring NTCH and Cricket to explain in prominent, plain, easily comprehensible language to all new and potential subscribers that no consumer is permitted to receive more than one Lifeline subsidy;

(9) requiring NTCH and Cricket to ensure that all marketing materials for the service make clear that it is a Lifeline-supported service;

(10) requiring NTCH and Cricket to immediately de-enroll any subscriber whom Cricket or NTCH knows is receiving Lifeline-supported service from another ETC or knows is no longer eligible;

and

(11) requiring NTCH and Cricket to submit to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement the obligations contained in this order within 30 days of the effective date of this order.

16. We find that these obligations are appropriate to improve the accountability of the disbursement of universal service funds while deterring waste, fraud, and abuse.⁵⁴ These obligations apply in any state in which NTCH or Cricket seeks to take advantage of this forbearance order. Consistent with obligations previously imposed on other companies seeking forbearance from ETC requirements for the purpose of participating as a provider in the Lifeline program, we require NTCH and Cricket to state the penalties for perjury in clear and conspicuous language on the subscriber self-certification form to comply with the first obligation and to monitor compliance of subscribers' self-certifications by retaining those self-certifications and providing them, as well as documentation of how

⁵³ This obligation does not apply if NTCH or Cricket requires subscribers to pay a monthly fee for the service.

⁵⁴ These obligations are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. *See, e.g.*, 47 C.F.R. § 54.410. On May 4, 2010, the Commission asked the Federal-State Joint Board on Universal Service to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs. *See Federal-State Joint Board on Universal Service; Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079 (2010).

the carrier obtained the certification, to the Commission upon request.⁵⁵ Moreover, these obligations further underscore the Commission's commitment to reduce waste, fraud, and abuse in Lifeline.⁵⁶

17. We note that after NTCH and Cricket submit their compliance plans, the Bureau will review those compliance plans for conformance with this order. Although NTCH or Cricket may be designated an ETC by either a state commission or this Commission in non-rural areas or for entire rural service areas in the meantime, neither NTCH nor Cricket may be designated in a part of a rural service area or receive federal Lifeline support in these areas until the Bureau approves the respective compliance plan.

18. For the reasons stated herein, we find that the statutory requirements for forbearance pursuant to section 10 of the Act are met and that conditionally granting NTCH and Cricket forbearance from the conformance requirement for the limited purpose of seeking a Lifeline-only ETC designation will further the statutory goals of providing low-income subscribers access to telecommunications and emergency services and promoting more competitive options for low-income consumers while protecting the universal service fund against waste, fraud, and abuse.⁵⁷ To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, parties may file appropriate petitions with the Commission and we have the option of reconsidering this forbearance ruling.⁵⁸ We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting NTCH and Cricket an ETC designation is in the public interest before including any part of a rural service area in NTCH's or Cricket's service area.⁵⁹ Furthermore, forbearance from the conformance requirement stated herein does not apply if NTCH or Cricket seeks ETC designation to receive high cost support. In that instance, NTCH and Cricket must conform its service area to that of the rural telephone company or else seek redefinition of the service area.

⁵⁵ See *TracFone Forbearance Order*, 20 FCC Rcd at 15103-04, paras. 18-21; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3392, para. 25; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, paras. 16-17.

⁵⁶ On June 21, 2011, the Commission addressed potential waste in the Lifeline program by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. See *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC 96-45, Report and Order, FCC 11-97, (rel. June 21, 2011) (*Duplicates Order*). The *Duplicates Order* adopts two changes to the Commission's Lifeline rules: 1) clarifies that low-income consumers may receive no more than a single lifeline discount at a time; and 2) requires ETCs to de-enroll subscribers that are receiving multiple benefits in violation of that rule within five business days of receiving notification from USAC that the consumer has not chosen that ETC after a minimum 30-day notice period to continue receiving service from that ETC. These rules will assist the Commission in its efforts to detect and resolve duplicative Lifeline claims. The Commission is also actively evaluating the longer-term program reforms proposed in the *Connect America Fund*. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4554 (2011) (*Connect America Fund*).

⁵⁷ 47 U.S.C. § 160(a).

⁵⁸ See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-09, para. 26 & n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 & n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998).

⁵⁹ 47 U.S.C. § 214(e)(2), (e)(6).

IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petitions for forbearance filed by NTCH, Inc., NTCH-West Tenn, Inc., and Cricket Communications, Inc. ARE GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

20. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, that the request of Cricket Communications, Inc. to narrow its petition for forbearance IS GRANTED to the extent discussed herein.

21. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, we FORBEAR from applying the conformance requirement of section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207(b) of the Commission's rules, 47 C.F.R. § 54.207(b), to NTCH, Inc., NTCH-West Tenn, Inc., and Cricket Communications, Inc. to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

22. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary